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BEFORE THE ARIZONA CORPORATION COMMISSION

BOB STUMP

Chairman

GARY PIERCE

Commissioner

BRENDA BURNS

Commissioner

BOB BURNS

Commissioner

SUSAN BITTER SMITH

Commissioner

Arizona Corporation Commission

DOCKETED

SEP 15 2014

DOCKETED BY

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IN THE MATTER OF THE APPLICATION  
OF CREXENDO BUSINESS SOLUTIONS,  
INC. FOR APPROVAL OF AN ORDER  
RESCINDING ITS BOND REQUIREMENT.

DOCKET NO. T-20737A-14-0204

DECISION NO. 74746

ORDER

Open Meeting  
September 9 and 10, 2014  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On June 25, 2014, Crexendo Business Solutions, Inc. ("Crexendo" or "Applicant") submitted an Application requesting an order rescinding the \$125,000 performance bond requirement contained in Decision No. 72733 (January 6, 2012).

2. In its Application, Crexendo states it provides competitive resold and facilities-based long distance and resold and facilities-based local exchange services primarily to small and mid-sized businesses in Arizona. Crexendo does not service residential customers on Arizona.

3. In addition, the Applicant states Crexendo submitted a \$125,000 letter of credit to the Arizona Corporation Commission ("Commission" or "ACC") on January 26, 2012.

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**Background**

4. On April 13, 2010, Crexendo filed an application for approval of a Certificate of Convenience and Necessity ("CC&N") for resold long distance and local exchange telecommunications service. On October 12, 2010, Crexendo amended their application to include facilities-based local exchange services. As a result of its analysis during the course of that Docket, Staff recommended denial of Crexendo's application based on the seriousness of complaint information uncovered by Staff that Crexendo failed to unilaterally disclose.<sup>1</sup> Alternatively, Staff also recommended that should the Commission decide to approve the application, Crexendo be required to meet several conditions proposed by Staff.

5. On January 6, 2012, in Decision No. 72733, Docket No. T-20737A-10-0144, the Commission granted Crexendo a Certificate of Convenience and Necessity to provide competitive resold and facilities-based long distance and resold and facilities-based local exchange services within the State of Arizona. At that time the Commission also adopted Staff's conditions and ordered Crexendo to comply with the following:

- Provide an initial report of the total number of full time employees;
- Provide a 90-day advance written notice to Docket Control of any workforce reductions thereafter;
- For a period of three years from the Decision date, provide a report every six months indicating the number of full time employees which should also include an explanation of any increase or decrease from the previous period;
- Within thirty days of the Decision date, provide an attestation that Crexendo is not utilizing the same marketing practices as its subsidiary, StoresOnline;
- For a period of five years from the Decision date, provide every six months an affidavit signed by a Corporate Officer informing the Commission of any investigations, litigation, settlements, fines or judgments involving Crexendo or its officers;
- For a period of five years from the Decision date, provide every six months an affidavit signed by a Corporate Officer certifying that Crexendo is in full compliance with Commission Rules and Decisions, Arizona State Statutes, and Federal laws;
- Docket conforming tariff pages for each service within its CC&N within 365 days from the effective date of the Order or thirty days prior to providing service, whichever comes first;

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<sup>1</sup> See Docket No. T-20737A-10-0144, Decision No. 72733, paras. 57, 58 and 62. This information included a prior criminal investigation by the Department of Justice of a company, Inter-Tel Tech, during the time when Mr. Steve Mihaylo, the CEO of Crexendo, was Chairman and CEO of Inter-Tel Tech, which resulted in disbarment of Inter-Tel Tech from the E-Rate Program; litigation regarding the business practices of StoresOnline for which Mr. Mihaylo also served as CEO and the denial of Crexendo's application to provide service by the South Carolina Commission.

- 1       • Procure a performance bond or irrevocable sight letter draft letter of credit (“ISDLOC”) equal to \$125,000;
- 2       • Procure an additional performance bond or ISDLOC equal to \$1 million to remain in effect three years and which could be reduced or eliminated via Commission approval of such a request after the three year period; and
- 3       • File the original performance bonds or ISDLOCs with the ACC Business Office with copies to Docket Control.

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6       6. On April 10, 2013, Crexendo filed an application to amend Decision No. 72733, specifically regarding the requirement that Crexendo maintain an additional performance bond or  
7 ISDLOC equal to \$1 million for three years. In support of this request, Crexendo alleged the  
8 modification would provide additional funds for Crexendo to invest in its expanding operations  
9 including its corporate headquarters located in Tempe, Arizona. On July 16, 2013, in Decision No.  
10 73391, the Commission granted this request and extinguished the \$1 million bond requirement.

#### 11 **Crexendo’s Application**

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13       7. In its Application to eliminate the performance bond or the ISDLOC requirement, Crexendo cites Arizona Administrative Code (“A.A.C.”) R14-2-1105(d), which states that “[i]n  
14 appropriate circumstances, the Commission may require, as a precondition to certification, the  
15 procurement of a performance bond sufficient to cover any advances or deposits the  
16 telecommunications company may collect from its customers, or order that such advances or deposits  
17 be held in escrow or trust.”

18  
19       8. Crexendo believes maintaining a performance bond is no longer necessary as it has made substantial investment (in the form of a Data Center located in Tempe) and has over 65  
20 employees in Arizona, has shown it has both the technical and financial capability to provide reliable  
21 and adequate services in Arizona, and does not collect any deposits or advance payments. Therefore,  
22 rescinding the bond/ISDLOC requirement will not alter the rates, terms or conditions of service for  
23 Arizona Crexendo customers, will not adversely impact service and will put Crexendo on “equal  
24 footing” with other Arizona CLECs as well as incumbent service providers such as CenturyLink.

#### 25 **Staff Analysis**

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27       9. Staff examined the content of the required compliance filings listed above from Decision  
28 No. 72733 and did not note anything of concern. To the best of Staff’s knowledge, there is no

1 evidence Crexendo has violated any rules or been involved in any investigation or litigation in any  
2 jurisdiction since being granted its CC&N in Arizona.

3 10. Staff has confirmed that on January 25, 2012, Crexendo filed the original \$125,000 letter  
4 of credit with the ACC Business Office. The terms of the letter of credit state it automatically renews  
5 on the expiration date, unless the bank sends notice that it does not intend to renew, and no such  
6 notification has been received. Therefore the letter of credit is current.

7 **Complaints and Compliance**

8 11. The Consumer Services Section of the Utilities Division reports there have been no  
9 complaints or opinions about Crexendo for the period of January 1, 2011 to the present. According  
10 to the Corporations Division, Crexendo is in good standing. The Compliance Section reports  
11 Crexendo is currently in compliance.

12 **Staff Recommendations**

13 12. The Commission has, in appropriate circumstances, relieved telecommunications  
14 providers of the obligation to maintain a performance bond or ISDLOC. Staff believes that based on  
15 the evidence that Crexendo has thus far met all the compliance requirements of Decision No. 72733  
16 in a timely manner, there have been no reported complaints or opinions about Crexendo and  
17 Crexendo is an Arizona-based employer in good standing, this is such an appropriate circumstance.  
18 Therefore, Staff recommends that Crexendo be relieved of the \$125,000 performance bond or  
19 ISDLOC obligation contained in Decision No. 72733.

20 13. Crexendo indicates in its Application that upon approval of this Application, the  
21 performance bond should be released and returned to the following name and address:

22 Jeff Korn  
23 Chief Legal Officer  
24 Crexendo Business Solutions, Inc.  
1615 South 52<sup>nd</sup> Street  
Tempe, AZ 85281

25 Crexendo has also indicated that no other Commission action is necessary to effectuate the release of  
26 the bond.

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CONCLUSIONS OF LAW

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2 1. Crexendo Business Solutions, Inc. is a public service corporation within the meaning  
3 of Article XV of the Arizona Constitution.

4 2. The Commission has jurisdiction over Crexendo Business Solutions, Inc. and the  
5 subject matter in this filing.

6 3. The Commission, having reviewed the filing and Staff's Memorandum dated August  
7 22, 2014, concludes that it is in the public interest to approve the Crexendo Business Solutions, Inc.  
8 Application as proposed and discussed herein.

ORDER

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10 IT IS THEREFORE ORDERED that the Application of Crexendo Business Solutions, Inc.  
11 to terminate the performance bond or irrevocable sight draft letter of credit requirement contained in  
12 Decision No. 72733 be and hereby is approved.

13 IT IS FURTHER ORDERED that Crexendo Business Solutions, Inc. may cancel, rescind,  
14 discontinue and be released from any performance bond, irrevocable sight draft letter of credit or  
15 other instrument obtained in compliance with the \$125,000 performance bond or irrevocable sight  
16 draft letter of credit requirement set by Decision No. 72733.

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IT IS FURTHER ORDERED that the \$125,000 performance bond on file with the Commission on behalf of Crexendo Business Solutions, Inc. be returned to the following name and address provided by the Applicant:

Jeff Korn  
Chief Legal Officer  
Crexendo Business Solutions, Inc.  
1615 South 52<sup>nd</sup> Street  
Tempe, AZ 85281

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

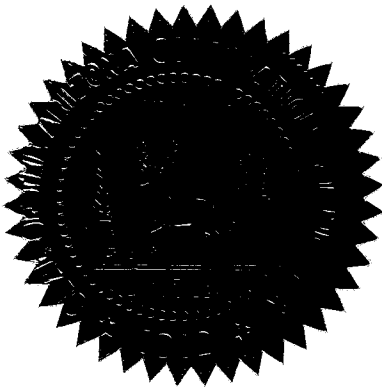
  
CHAIRMAN

  
COMMISSIONER

  
COMMISSIONER

  
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COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 10<sup>th</sup> day of September, 2014.

  
JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

SMO:MAC:sms\CHH

1 SERVICE LIST FOR: Crexendo Business Solutions, Inc.  
2 DOCKET NO. T-20737A-14-0204

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7 Phoenix, Arizona 85004

8 Mr. Steven M. Olea  
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10 Arizona Corporation Commission  
11 1200 West Washington Street  
12 Phoenix, Arizona 85007

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15 Arizona Corporation Commission  
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17 Phoenix, Arizona 85007

18 Ms. Lyn Farmer  
19 Chief Administrative Law Judge  
20 Arizona Corporation Commission  
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